



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JUN 22 2010

201036029

U.I.L. 408.03-00

SE:T:EP:RA:T4

XXXXX
XXXXX
XXXXX

Legend:

Taxpayer A = xxxxx

IRA X = xxxxx

Account Y = xxxxx

Financial Institution C = xxxxx

Amount N = xxxxx

Amount O = xxxxx

Year 1 = xxxxx

Date 1 = xxxxx

Dear xxxxx:

This is in response to a letter dated June 22, 2009, as supplemented by correspondence dated October 7, November 5 and November 9, 2009, and January 22 and March 3, 2010, submitted on your behalf by your authorized

201036029

representative, requesting a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"). The following facts and representations are made under penalties of perjury in support of your ruling request.

Taxpayer A, age 77, represents that he received a distribution of Amount N from IRA X, an Individual Retirement Arrangement he maintained with Financial Institution C. Taxpayer A asserts that his failure to accomplish a rollover of Amount N into an IRA within the 60-day period prescribed by section 408(d)(3) of the Code was due to his mental condition which severely impaired his ability to manage his financial affairs. Taxpayer A further asserts that Amount N has not been used for any other purpose.

IRA X was spread among nine different investment funds. Each fund had an identifying title and fund number which distinguished one fund from the other. Taxpayer A received a separate written statement for the transactions of each fund. The statement for each fund identified the investment as an IRA on behalf of Taxpayer A. Each statement showed an account number common to all nine funds.

In addition to IRA X, Taxpayer A maintained a non-IRA account (Account Y) with Financial Institution C.

On Date 1, Taxpayer A gave Financial Institution C instructions by telephone to withdraw the account balance (Amount N) of eight of the nine funds held by IRA X intending to transfer Amount N into the ninth fund of IRA X from which no withdrawal was made. Documentation shows that although IRA X and Account Y did not have the same account number, the ninth fund of IRA X and Account Y had the same title and fund number.

Due to his diminished capacity as a result of prescription medication he was taking, Taxpayer A became confused and the distribution was instead transferred into Account Y, the non-IRA money market account. Financial Institution C deducted 10 percent Federal tax withholding from the distribution, resulting in Amount O being deposited in Account Y.

While preparing Taxpayer A's tax return for Year 1, Taxpayer A's accountant discovered that Amount N had been withdrawn from IRA X. Such discovery occurred after the 60-day period for rolling over Amount N into another IRA had expired.

Documentation, including a letter from Taxpayer A's treating physician, states that Taxpayer A suffered from diminished mental capacity at the time of the

distribution of Amount N from IRA X and during the 60-day period following the distribution due to the side effects of medication prescribed to Taxpayer A which severely impaired Taxpayer A's ability to manage his financial affairs.

Based on the facts and representations presented in this letter, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount N from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(d)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that on Date 1, he intended to transfer Amount N into the ninth fund of IRA X.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount N from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount N into an IRA.

Provided all other requirements of section 408(d)(3) of the Code except the 60-day requirement are met with respect to such contribution amount will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed to Taxpayer A by section 401(a)(9) of the Code.

This ruling also does not authorize the rollover of interest or dividends earned on Amount O while Amount O was held in Account Y.

This ruling assumes that IRA X satisfies the qualification requirements of section 408 of the Code at all times relevant to this transaction.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact xxxxx, I.D. # xxxxx, by telephone at -xxxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 4

Enclosures:

Copy of deleted ruling letter
Notice of Intention to Disclose

cc:

xxxxxx
xxxxxx
xxxxxx